

**Steps in Interest-Based Negotiation
Federal Mediation and Conciliation Service
Human Resources Development Canada**

Step 1 - Formulation of Joint Opening Statement

Once the decision has been made to use the interest-based process and joint training has been completed, preparation for negotiations begins with the parties developing a joint opening statement of objectives for the negotiation process.

Purpose:

- Sets positive tone for negotiations
- Ensures common understanding of process
- Can be provided to constituents

All of these may be useful since interest-based bargaining constitutes a departure from the parties' usual way of conducting negotiations.

This and all steps of the interest-based approach are based on the assumption that time spent in early, open, and explicit discussion of both process and content issues will pay dividends in fewer misunderstandings and less rigidity and entrenchment later in the process.

Joint statements of objectives usually contain:

- a good faith commitment by all parties to make a serious effort to use the interest-based process and to refrain from attempting to apply power to the resolution of issues
- a description of their understanding of interest-based negotiation
- a statement of why they decided to use the process, including any shared, superordinate goals (e.g. the long-term viability of the employer)

Sample Joint Opening Statement:

The Union and the Company plan to make every effort to negotiate the collective agreement using the interest-based process. They will endeavour to share

information openly and participate in discussions of a range options with the understanding that no final commitments will be made until the end of the process.

As the parties jointly face the challenge of the future, they share the following values:

- client focus
- the overriding value of people as a resource
- union-management partnership
- quality and continuous improvement

Alternatives:

- Each party prepares and provides to the other a separate opening statement setting out the what, how and why of their decision to use the process. This has the advantage of requiring less time and effort, but the process lacks the synergistic benefits of working through a joint statement.
- A joint subcommittee prepares a joint statement of objectives prior to negotiations. This maintains the jointness of the process without requiring the time and effort of the full negotiating team.

The joint or separate opening statements should be copied onto flip chart paper and posted in view of the group.

Step 2 - Establishing Ground Rules

In traditional negotiations, parties do not usually engage in much discussion about the negotiating **process**. Ground rules are typically used simply to establish agreement as to where, when and how frequently the parties will meet. In addition to these housekeeping matters, ground rules are used in interest-based bargaining to establish the process, including the new negotiating norms and the expected behaviours of individuals. The joint development of these ground rules helps ensure:

- Ownership of the process
- Commitment to the ground rules

Ground rules typically cover:

- Physical arrangements
- Use of flip charts, facilitation
- Start and stop times, breaks
- Use of caucuses
- Record of proceedings, if any
- Table behaviour, such as:
 - Focus on issues, not personalities
 - One person speaking at a time
 - No cell phones on in meetings
 - Treat the input of others with respect
- Use of subcommittees
- Communications
- Confidentiality of information shared
- Right to withdraw from process or revisit the ground rules

The agreed to ground rules should be written on flip chart paper and posted in view of the group. All negotiators should take personal responsibility for ensuring that

the ground rules are respected.

Sample Ground Rules:

The following ground rules were used by one Canadian union and company in their interest-based bargaining process.

- Separate, independent communication channels
- Advise each other of communication plans and the issues/interests to be covered
- No official detailed record/minutes of proceeding
- Periodic jointly prepared summaries based on charts and reviewed by full group
- Don't over-advertise (hype) the interest-based bargaining process
- Options not to go beyond table
- Tentative agreement on issues which may be revisited if needed
- In special cases new issues may be brought up later
- Co-chairs needed for coordination/communication, with understanding of full participation of all
- Experts/resources to attend with advance notice if possible
- Review the process at intervals
- No smoking in meeting room
- Voice issues openly to full group
- Respectful of each other's ideas/suggestions
- Written handouts to be coordinated through co-chairs
- When sensitive, confidential information is to be shared, the following procedure will be used:
 - the provider will state the nature of the sensitivity
 - the parties will discuss the information and decide by consensus how it is to be handled
- Everyone is personally pledged to support the agreement reached

Step 3 - Developing the List of Issues

In preparation for traditional collective bargaining, parties normally develop lists of demands or positions, which they exchange early in the negotiation process, thereby determining the **issues** or topics to be discussed. In interest-based negotiation, separate lists of demands are not prepared, and it is fundamental to the process that parties make a concerted effort to avoid taking a firm position on any issue in advance of bargaining.

Instead, each party considers the hopes, fears, needs and concerns of its constituents and then prepares a list of issues it wants discussed in the negotiations. Once these lists of issues have been exchanged, the parties typically meet to agree on a common list for the negotiations.

Lists of issue should be:

- **Realistic** - Unlike traditional negotiations, this list should not contain "throw-away" issues which are included simply to be dropped when a concession is required. The list should be an honest statement of those issues which a party believes must be addressed.
- **Open-ended** - the statement should not include any positions or preferred solutions, but simply a description of the problem. It may be helpful to reframe the issue as a question to remove positions, interests, options, solutions and judgements from the statement of the issue. The question should start with an open-ended phrase such as: "How can we..." or "What is the best way to ensure..."

Example:

Employer Issue: We need to reduce abuse of sick leave.

Union Issue: We need to reward employees for good attendance.

Reframed Joint Issue: What can we do to promote an improvement in attendance?

Suggestions for negotiating common list of issues:

1. Issues can be stated very broadly in a word or short phrase: e.g. family leave, or more specifically in a complete sentence: e.g. The challenges faced by employees attempting to balance work and family responsibilities.

2. It may be helpful to **cluster** issues under broader headings, with each subissue identified.
3. All issues should be **clarified** at this stage so that all parties have a common understanding of the problem or topic to be addressed. The party proposing the issue for inclusion should provide examples and clarify the examples. It is very important that everyone has the same definition of the issue before proceeding to the next step.
4. If the issue is still not clear, a joint sub-committee could be assigned the task of **investigating the matter** and developing background information for the plenary group.
5. The agreed to definition of each issue should be **copied onto a separate sheet of flip chart paper**. This will be the starting point for the discussion of each issue.

Step 4 - Identification of Interests

Issue: Topic or subject under discussion

Position: One party's solution to an issue

Interest: One party's concern, fear, need or worry about an issue

Positional Bargaining

In traditional negotiations, positions are the primary vehicle of communication between the negotiators. Typically, opening positions are exaggerated and negotiators then use a ritual of posturing and bluffing to retreat from their positions to reach an agreement. Using positions and traditional negotiating behaviour can create the following problems:

- Negotiators become locked into positions
- Positions become entangled with egos
- Creativity is discouraged
- Time and effort are wasted
- May damage the relationship

Interest-Based Bargaining

In interest-based bargaining, parties avoid taking positions and try to focus on underlying interests on each issue. In fact, the success of the process depends upon the ability of the negotiators to suppress the urge to take firm positions.

Focusing on interests and avoiding positions has the following advantages:

- Interest statements, unlike positional arguments, are not tied to a particular outcome - therefore, the other side can acknowledge their legitimacy without committing to any particular course of action
- Interests are easier to reconcile than positions
- Sharing information about interests builds trust, enhances relationships and leads to further information-sharing

- A fuller understanding of the interests of all parties provides a basis for developing options

Types of Interests

- **Mutual interests** - the richest source of information for options
- **Separate non-conflicting interests** - different interests which are not mutually exclusive
- **Separate, conflicting interests** - different interests which are mutually exclusive

Positions tend to be mutually exclusive by definition. In interest-based bargaining it is recognized that the parties will have interests which conflict, but there will also be much more common ground when the parties explore interests than when they dig themselves into positions.

Guidelines on how to explore interests:

- Start with a belief that you do not already know the solution to the issue
- Share information openly
- Take turns sharing interests on an issue and write them on flip charts, posting completed sheets
- Constantly ask yourself and others: “Why?” “What is the background to that?” “Can you elaborate on that?” “What is driving that?” “Can you give me an example?”
- Use questioning as a genuine tool for learning more, not in a confrontational, challenging manner which demonstrates that you disagree with another’s view
- Practice effective listening - when others are describing their interests, concentrate on listening to achieve a full understanding
- Do not move on to the next task until everyone understands the interests that have been shared
- Keep an open mind and make an effort to avoid confrontational behaviour

It will take practice and effort to become comfortable with the process of exploring and sharing interests. Negotiators will naturally gravitate toward positions and all members of the group should be aware of this tendency and give others a gentle reminder when they become positional.

Step 5 - Generation of Options

Issue:	Topic or subject under discussion
Interest:	One party's concern, fear, need or worry about an issue
Option:	One of a number of possible solutions to resolve an issue

In traditional negotiations, we often settle on the first solution which is minimally acceptable to both, often a compromise between our positions. In so doing, we sometimes leave something on the table, that is, neither party does as well as was possible in the circumstances.

In interest-based bargaining no decisions are made until a full range of options have been explored, on the assumption that the sharing of interests and the joint exploration of options will ensure that opportunities for mutual gain are not missed.

Once the issue has been defined and interests have been shared, the parties jointly generate options using the brainstorming technique and writing the options on flip charts.

Brainstorming is a creative process, the objective of which is to generate as many options as possible - the goal is **quantity not quality**. In order for brainstorming to work, the **rules must be clearly understood and enforced**. In particular, the process of inventing options must be separate from the process of evaluating the options and making decisions.

During brainstorming, the facilitator should write each idea on the flip chart exactly as presented, summarizing and abbreviating, but taking care not to change the basic idea. Put everything on the board, including repetitions of ideas already presented and ideas which are clearly absurd. There will be an opportunity later to edit the options and discard the absurdities.

We find creative processes like brainstorming difficult for the following reasons:

- Fear of looking foolish
- Premature judgement
- Assumption that we already know the single, correct answer to the problem

- Belief that we should look after ourselves and let the other side look after themselves
- Difficulty of seeing things in new ways

Suggestions for encouraging creativity:

- Conduct the meeting in as informal a setting as possible - try standing or walking around during brainstorming
- Challenge assumptions - the ones you hold as well as those of others
- Question perceptions and traditions
- Suspend judgement
- Analyse the problem in parts or in ways it has never been examined before
- Try to examine the issue from the point of view of others - put yourself in their shoes

Step 6 - Development of Standards

Issue: Topic or subject under discussion

Interest: One party's concern, fear, need or worry about an issue

Option: One of a number of possible solutions to resolve an issue

Standards: Criteria used to compare, evaluate or judge a number of options

In traditional negotiations, outcomes are often determined by the relative power of the parties. In the long run this may not be a satisfactory method because it can leave one or both parties feeling alienated and mistreated. In interest-based negotiations, parties may attempt to resolve issues using fair and mutually agreed to criteria or standards rather than power. Once interests have been explored and options generated for a given issue, the parties may jointly create standards for judging the options.

Examples of Standards:

- Feasibility or practicality
- Mutual gain
- Satisfaction of mutual interests
- Acceptability to constituents
- Area or industry practice
- Fairness
- Equal treatment
- Productivity
- Cost effectiveness
- Impact on clients
- Impact on quality

Parties will need to experiment with the process to determine how many standards they wish to use for each issue and how general or specific the standards should be. Standards may not be scientific or precise. They function primarily as a guide or

structure for the discussion of the relative merits of the various options.

The most important thing about standards is that they be developed jointly by the parties and not introduced unilaterally. Therefore, if you know in advance of the negotiations that external information will be useful to the negotiators, assign a small, joint subcommittee to investigate the issue and gather the relevant information.

As with all steps of the interest-based process, the group's agreed to criteria should be documented on flip chart paper and posted in full view of all participants.

Step 7 - Evaluation of Options

Once parties have generated a number of possible options for an issue and jointly developed standards for judging the options, the next step in the process is to jointly evaluate the options against the standards. The group may find the consensus decision-making technique useful at this stage.

The first task is to edit the list of options by combining any redundant options and eliminating those that clearly do not meet any standard or are otherwise absurd. Remaining options are clarified and explained. The group must be careful at this point not to assign ownership of an option to the person who provides the explanation or clarification of it.

Parties will need to experiment to develop a process for evaluating options which fits their way of working together. Some parties find it useful to categorize the options at an early stage without engaging in a full discussion. One process for eliminating unworkable options is the **three-cut method**. The group reviews the options three times and, each time, eliminates those options which do not satisfy the following criteria:

- **1st Cut: Interests**

The group reviews the list of options against the union and management interests identified earlier. An option is still viable if it has the potential of meeting the interests of both parties.

- **2nd Cut: Resources**

The group reviews the list of options still viable after the first cut based on resources. The options for which resources could potentially be made available remain on the list following this cut.

- **3rd Cut: Saleability**

The group reviews the remaining options to determine which ones would be acceptable to the constituents of both parties.

Once the three cuts have been completed, the remaining options are discussed fully and compared against the agreed standards. This step of the process can become quite creative once the group has fashioned a process which suits them and becomes comfortable working with it. At this stage, with all the interests, options and standards related to the issue posted on the wall before them, group members

are often able to see possible combinations of options which represent a solution that had not previously been considered.

In most cases, a final decision on the issue will be postponed until group members have had an opportunity to gather further information on some of the options and/or discuss them with their principals.

When the group reaches consensus on the issue, they may wish to assign it to a joint sub-committee to develop contract language around the selected option or options. It is understood that, although consensus has been achieved, the issue can be raised again in the negotiation and the tentative agreement may be revisited if a subsequent discussion affects that issue in an unforeseen manner.

If the group is unable to reach consensus on the issue, the appropriate action will depend on the reason for the impasse:

- **Information deficiency or disagreement over facts** - one group member or a joint sub-committee could be assigned to gather additional information and report back to the group
- **Discussions with key stakeholders are necessary** to determine possible impacts of various options before group members can make a final decision - the item can be placed in the "parking lot" until such discussions have taken place
- **Resolution of the issue is dependent upon the outcome of other issues** - item can be parked to be revisited when the related issue or issues are being discussed
- **Strong emotions or conflicts have arisen over the issue** - it may be appropriate to park the issue, allow a cooling off period and revisit the issue at a later point
- **The parties cannot agree on the outcome of the issue** - the parties, having fully explored all interests and options, have reached an impasse and, as further discussion is fruitless, the issue should be parked and revisited later in the negotiations

Step 8 - Closure

After completing the above steps on all issues, the negotiation moves toward closure. It is likely that, at this point, some issues will have been resolved and some will remain unresolved.

It may be useful to group the unresolved issues based on similarity of issue or common interests. Each group of issues can then be addressed and the group attempts to fashion a package of options which addresses all the issues in a category.

The consensus decision-making technique is useful at this point of the process. In order to reach agreement, parties will have to remember that the definition of a consensus is that all members of the group **support** the decision, although they may not **prefer** it, because they each feel that they had an opportunity to be heard and the group's decision is the best course of action in the circumstances.

It is important to remember that it is still collective bargaining and “No” is part of the process. There are some things you cannot get at the bargaining table regardless of how you conduct the negotiations, and the interest-based approach does not provide the magic bullet.

All negotiations consist of a combination of integrative and distributive bargaining. In interest-based negotiation, as with any other negotiation, some packaging of issues will occur at the end of the process and some trades or compromises will inevitably be necessary. The advantage of interest-based negotiation is that more opportunities may be available for expanding the pie before it is cut, but sooner or later the pie will have to be cut.

When the group reaches the point where final decisions must be made, the process often resembles traditional negotiations in that the parties may spend more time in caucus preparing comprehensive responses. Typically, however, there is generally much less tension, adversarialism and competitive behaviour at the end of the interest-based process.